Filed 5/4/12 Robertson v. Grant CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

APRIL ROBERTSON, Plaintiff and Respondent, v. DONOVAN GRANT, Defendant and Appellant, COUNTY OF LOS ANGELES CHILD SUPPORT SERVICES DEPARTMENT, Real Party in Interest and Respondent.	B226524 (Los Angeles County Super. Ct. No. BL062494)

APPEAL from an order of the Los Angeles County Superior Court. Anthony B. Drewry, Judge. Affirmed.

Donovan Grant, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Fesia Davenport, Chief Attorney, and Richard H. Kim, Legal Counsel, for Real Party in Interest and Respondent.

We affirm the registration of an out-of-state child support order. (See Fam. Code, § 4950 et seq.)

FACTS

The Underlying Out-of-state Child Support Order

Donovan Grant and April Robertson are the parents of a daughter born in October 1993, possibly in California. In August 1996, Robertson moved to Virginia with the parties' child. During the years that followed, Grant and Robertson dealt with child support and visitation matters, to the extent they were addressed at all, through informal arrangements.

In late March 2007, Grant travelled to Virginia to file a petition in the Juvenile and Domestic Relations District Court in Petersburg, Virginia, seeking custody and visitation orders pursuant to Virginia's version of the Uniform Child Custody Jurisdiction and Enforcement Act. (See Va. Code Ann. § 20-146.1 et seq.) At about the same time, Robertson filed a petition in the same court, seeking child support orders as to Grant, a nonresident, pursuant to Virginia's version of the Uniform Interstate Family Support Act. (See Va. Code Ann. § 20-88.32 et seq.) The custody and visitation proceeding, and the child support proceeding, were addressed as separate proceedings in accord with Virginia law.[1] Hearings on both petitions were scheduled for April 10, 2007. Grant and Robertson were both present in court for the hearings. Perhaps at the courthouse, but without doubt at someplace in Virginia, Grant was personally served with a summons on the petition filed by Robertson for child support orders.

On April 10, 2007, in Robertson's child support proceeding, the Juvenile and Domestic Relations District Court in Virginia entered an order directing Grant to pay child support in the amount of $221 per month, effective April 10, 2007, with the first

---

[1] California has adopted the same uniform laws. California's version of the Uniform Interstate Family Support Act is found at Family Code section 4900 et seq.; California's version of the Uniform Child Custody Jurisdiction and Enforcement Act is found at section 3400 et seq. The child support order involved in the appeal before us today was issued by the Virginia Circuit Court in 2007 and was registered locally pursuant to California's version of the Uniform Interstate Family Support Act.

payment due on May 1, 2007. On April 11, 2007, in Grant's custody and visitation proceeding, the Juvenile and Domestic Relations District Court in Virginia entered orders granting sole legal and physical custody to Robertson, and granting visitation to Grant according to a specified schedule and on specified terms.

On a date not clear from the record, Grant filed a "*de novo* appeal" in the Virginia Circuit Court in Petersburg, challenging the child support order issued by Juvenile and Domestic Relations District Court on April 10, 2007. On August 17, 2007, Grant presented his "*de novo* appeal" to the Virginia Circuit Court, and the court took the matter under submission. On September 10, 2007, the Virginia Circuit Court entered a "Final Order" of child support. The final child support order provides that "[u]pon hearing the evidence," the Virginia Circuit Court found Robertson is entitled to child support from Grant in the amount of $230.50 per month, plus an additional $65 per month for arrearages, for a total monthly payment of $295.50. As he does now, Grant lived in California at the time of the 2007 de novo appeal proceedings in the Virginia Circuit Court. Nonetheless, he was physically present in the Virginia Circuit Court, and represented by counsel, when the court heard his de novo appeal concerning his child support obligation.[2]

Grant filed an appeal in the Virginia Court of Appeals, challenging the final child support order entered on September 10, 2007, by the Virginia Circuit Court. Grant represented himself and filed an opening brief in the appeal. His opening brief on appeal argued that as an out-of-state resident he should have been permitted to testify by telephone for the hearing in the circuit court. (Citing Va. Code Ann. § 20-88.59.) Grant further argued that the Virginia courts improperly exercised personal jurisdiction over him because he had been in Virginia to participate in a child custody proceeding, and, thus, was not subject to the personal jurisdiction of Virginia's courts for any other

---

[2] The record before us on appeal contains only the "Final Order" of child support entered by the Virginia Circuit Court in September 2007; we do not have any materials (for example, exhibits or reporter's transcripts of testimony) showing what issues were specifically contested at the 2007 proceeding on Grant's de novo appeal in the Virginia Circuit Court.

proceeding. He cited Virginia Code Annotated section 20-146.8. Grant also argued the trial court abused its discretion in setting the visitation schedule and terms because they are too restrictive. In February 2008, the Virginia Court of Appeals dismissed Grant's appeal on the ground that Grant had failed to submit a trial transcript or statement of facts.

The Child Support Order Registration Proceeding in California

The Interstate Division of the County of Los Angeles Child Support Services Department (CSSD) assists and coordinates local collection efforts of out-of-state child support orders. To that end, CSSD is authorized by statute to file a "notice of registration" of an out-of-state child support order in the local superior court in order to enforce the order in California. (See Fam. Code, § 4952.) In 2008, CSSD opened a case to register the September 2007 child support order issued by the Virginia Circuit Court.[3] On September 10, 2008, CSSD filed the notice of registration of out-of-state support order in the Los Angeles Superior Court and served the notice on Grant by mail. The notice advised Grant that the registered order from the Virginia Circuit Court is enforceable in the same manner as a support order made by a California court. Further, that if he wanted to contest the validity or enforcement of the registered order, he had to file a request for a hearing within 25 days.

In response, Grant represented himself and filed a "Motion to Vacate or Modify" the registered Virginia Circuit Court child support order. (See Fam. Code, § 4956.) Grant's motion to vacate contended that the Virginia Circuit Court did not have personal jurisdiction over him. CSSD filed a responsive declaration asserting that it had registered a valid Virginia support order. On July 1, 2009, the trial court heard arguments on Grant's motion to vacate. Following the hearing, the court accepted further briefing. The trial court then entered an order denying Grant's motion to vacate the registered Virginia

---

[3] To be accurate, CSSD opened a case file earlier, then closed the case, then reopened the case file after the February 2008 order of the Virginia Court of Appeals dismissing Grant's appeal from the Virginia Circuit Court's final child support order issued in September 2007.

Circuit Court's child support order. Shortly thereafter, the trial court vacated its ruling, so as to allow for discovery, and reset Grant's motion.

Later, the trial court again heard arguments on Grant's motion to vacate and then took the matter under submission. On July 8, 2010, the trial court issued a minute order denying Grant's motion.

Grant filed a timely notice of appeal.

DISCUSSION

I. Re-litigating the Issue of the Virginia Courts' Personal Jurisdiction Over Grant by way of his Motion to Vacate Filed in California

Grant, who represented himself on appeal, contends the trial court's order denying his motion to vacate the registered 2007 Virginia Circuit Court child support order must be reversed because " 'Robertson,' through her assignees 'VDCSE' [the Virginia Division of Child Support Enforcement] and 'CSSD' under color or law, did not meet its burden of proof, through [a] preponderance of evidence that the Virginia' order, was obtained through valid and proper grounds/facts to [have] exercised personal jurisdiction over 'Grant.' " He contends "[t]he case of *Burnham v. Superior Court* [(1990) 495 U.S. 604] is not case law that applies in this matter." We disagree.

In his motion in the trial court to vacate the registered 2007 Virginia Circuit Court child support order, Grant collaterally attacked the validity of the order on the ground of lack of personal jurisdiction. Such a collateral attack is allowed by Family Code section 4956, subdivision (a)(1). In denying Grant's motion, the trial court ruled that Grant had not established a defense pursuant to section 4956, subdivision (a)(1), in that (1) the record showed he raised a lack-of-personal-jurisdiction claim in Virginia's courts, and lost in Virginia's courts, and (2) he presented "insufficient evidence" in the trial court to show that the rejection of his claim of a lack of personal jurisdiction in the Virginia courts had "constituted legal error." The trial court further ruled that Grant could not re-litigate the issue of the Virginia courts' personal jurisdiction over Grant because he had litigated the issue in the Virginia courts, and the Virginia courts' rulings were entitled to full faith and credit in California's courts. Finally, the trial court ruled that Grant's

physical presence in Virginia when he was personally served with summons in the child support proceeding gave authority to Virginia's courts to exercise personal jurisdiction over him. (Citing *Burnham v. Superior Court, supra,* 495 U.S. at p. 610.)

We believe the trial court's order was correct. Grant litigated and lost his personal jurisdiction claim in Virginia's courts, and, thus, he is precluded by the full faith and credit clause of the United States Constitution from re-litigating his personal jurisdiction claim in California's court. (*Craig v. Superior Court* (1975) 45 Cal.App.3d 675, 680-681 (*Craig*).) As explained in *Craig*:

"The full faith and credit clause of the United States Constitution (art. IV, § 1) bars a defendant from collaterally attacking a divorce decree on [personal] jurisdictional grounds in the courts of a sister state where there has been participation by the defendant in the divorce proceedings, where the defendant has been accorded full opportunity to contest the jurisdictional issues and where the decree is not susceptible to collateral attack in the courts of the state which rendered the decree. (*Sherrer v. Sherrer* [(1948)] 334 U.S. 343, 351-352; *Heuer v. Heuer* [(1949)] 33 Cal.2d 268, 271.) . . . .

"The limitation on inquiry into the original court's jurisdiction was succinctly described in *Durfee v. Duke* [(1973)] 375 U.S. 106, 111: '. . . [W]hile it is established that a court in one State, when asked to give effect to the judgment of a court in another State, may constitutionally inquire into the foreign court's jurisdiction to render that judgment, the modern decisions of this Court have carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit – even as to questions of jurisdiction – when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.' " (*Craig, supra,* 45 Cal.App.3d at pp. 680-681, citations omitted.)[4]

[4] The exception to the rule barring re-litigation of an issue previously addressed in a sister state, available when a party alleges that a prior court ruling was obtained by fraud, is addressed in the next part of this opinion.

II. Fraud

Grant contends the trial court's order denying his motion to vacate the registered September 2007 Virginia Circuit Court's child support order must be reversed because the Virginia court's order is the product of fraud. Again, we disagree.

We have reviewed all of the documents submitted to the trial court by Grant, and see no evidence establishing fraud in the course of the proceedings in the Virginia courts. Grant's myriad claims that the child support proceeding occurred in Virginia while he is a California resident, and that credibility issues were not adequately addressed, does not show fraud. We see nothing in Grant's submissions tending to prove that fraud is why the Virginia Circuit Court ordered him to pay $295.50 per month in child support.

III. Substantial Evidence

We summarily reject Grant's contention that the trial court's order denying his motion to vacate the registered September 2007 Virginia Circuit Court's child support order must be reversed because the Virginia court's order — specifically as the amount of child support — is not supported by substantial evidence. Grant's substantial evidence claim is not an authorized ground for vacating, in a California court, the Virginia Circuit Court's child support order. (Fam. Code, § 4956.)

DISPOSITION

The trial court's order dated July 8, 2010, is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.